



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

PAUL R. LEPAGE
GOVERNOR

DARRYL N. BROWN
COMMISSIONER

MEMORANDUM

TO: The Board of Environmental Protection

FROM: Paula Clark, Director, and Cyndi Darling, Project Analyst, of Division of Solid Waste Management, Bureau of Remediation and Waste Management

RE: Denial of Appeal filed by Municipal Review Committee, Inc. and Penobscot Energy Recovery Company, LP of Maine Hazardous Waste, Septage and Solid Waste Management Act Approval #S-020700-WD-W-M for a Minor Revision to the License for the Juniper Ridge Landfill in Old Town

DATE: March 3, 2011

Statutory and Regulatory References: The applicable statutory and regulatory framework for this minor revision application is the *Maine Hazardous Waste, Septage and Solid Waste Management Act* (Waste Management Act), 38 M.R.S.A. §§1301 to 1310-Y and 06-096 CMR 2 *Rules Concerning the Processing of Applications and Other Administrative Matters*, 06-096 CMR 400 *Solid Waste Management Rules: General Provisions* §§ 1, 2 and 3, and 06-096 CMR 401 *Solid Waste Management Rules: Landfill Siting, Design and Operation* §§ 2, 3 and 4. The Solid Waste Management Rules interpret and elaborate on the Waste Management Act criteria. In the sections pertinent to this appeal, the Solid Waste Management Regulations define terms used in the Solid Waste Management Rules, provide guidance on the appropriate type of application to file when an alteration to the siting, design or operation of a licensed solid waste facility is to be requested, and provide guidance on the protection of the liner system in a secure landfill. Procedures for appeals before the Board are outlined in the Department's Rules Concerning the Processing of Applications.

Location: The project site is located between Route 16 (Bennoch Road) and Route 43 (West Old Town Road) in Old Town, Maine.

Procedural History and Project Description: On October 3, 2006 the licensee submitted a minor revision application to increase a license limit (310,000 tons per year) on the total amount of unprocessed municipal solid waste (MSW) that may be handled at the Maine Energy incinerator in Biddeford and Juniper Ridge Landfill in Old Town; the license limit is in the Juniper Ridge Landfill amendment license. At Maine Energy, the unprocessed MSW is the waste that is delivered to the incinerator by its customers; at Juniper Ridge Landfill the unprocessed MSW is limited to MSW bypassed from Maine Energy when a bypass event is called in accordance with its contracts with its customers. On December 10, 2009 the licensee

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modified the still-pending minor revision application to remove the request to increase the 310,000 tons per year limit to 325,000 tons per year. Instead, the 310,000 tons per year limit would not include MSW bypass that Maine Energy sent to Juniper Ridge Landfill for use in the protective “soft layer” required by the Solid Waste Management Rules to be the first lift placed in newly-constructed landfill cells. .

The Department received 2 letters of concern about the proposal; both were from the Old Town/Alton area. Department staff discussed the proposal at quarterly meetings of the Juniper Ridge Landfill Advisory Committee.

The Department approved the minor revision application on September 10, 2010. A timely joint appeal to the Board was filed on October 13, 2010 by the Municipal Review Committee, Inc. and the Penobscot Energy Recovery Company, LP. The appeal includes a request for a public hearing .

Environmental/Regulatory Issues and Discussion: The appellant contends the minor revision license allows only MSW bypass from Maine Energy to be used in the soft layer, and this grants Maine Energy a competitive advantage over PERC, may decrease the amount of landfill capacity available for PERC’s residues, and negatively impacts PERC in other ways. The appellant also contends that the proposal should have been submitted and processed as an amendment application, that the licensee failed to meet the applicable licensing criteria, that the Department’s minor revision license violated fundamental fairness, is anti-competitive and violates the State solid waste management hierarchy.

The Department responds that the appellant misconstrues the context and purpose of the minor revision license, and is attempting to interpret it more narrowly than intended. The following are the important facts the Department requests the Board keep in mind as this appeal is heard:

- The 310,000 tons per year unprocessed MSW limit applies only to Maine Energy and Juniper Ridge Landfill; there is no limit on the amount of unprocessed MSW the other 3 Maine incinerators can handle (or bypass to Juniper Ridge Landfill).
- The minor revision license does not exclude PERC or the other Maine incinerators without a limit from supplying MSW bypass to Juniper Ridge Landfill for the soft layer; it merely gives Maine Energy the ability to also provide MSW bypass for this purpose without finding that it has reached the 310,000 tons per year limit before the end of the calendar year and is thus unable to meet its contractual obligations to accept MSW.
- The easing of the 310,000 tons per year limit with regards to MSW bypass exclusively used in the soft layer of newly constructed cells at Juniper Ridge Landfill does not harm PERC.

Given the apparent misunderstanding as to the purpose of the minor revision license, the Department has proposed a modification to the language of the license that it hopes will address the appellant’s concern.

Department Recommendation: The Department recommends that the Board deny the appellant's request for a public hearing on this appeal and affirm the Department's decision to approve the minor revision request in Department Order #S-020700-WD-W-M, with the proposed modification to Finding of Fact #3.

Estimated Time of Presentation: 2 hours